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EX-GOVERNOR JOSEPH M. BROWN ANSWERS JUDGE S. B. ADAMS

The Constitution published on the first Sunday in September an extensive Communication from Judge Samuel B. Adams defending ex-Governor Slaton, and incidentally criticizing ex-Governor Joseph M. Brown, who replies in the following Communication.

With this, the controversy over the Matter referred to ends, so far as *The Constitution* is concerned. We believe that no good purpose can be served by a continued discussion of the issues involved. The sooner the whole of this dark chapter of Georgia History is consigned to the Realm of the Past, the better it will be for the State.

EX-GOVERNOR BROWN'S REPLY TO CRITICISM OF JUDGE ADAMS

Editor Constitution: Returning home after an absence of several weeks, I note in your issue of September 5, a Communication from Judge Samuel B. Adams, defending Governor Slaton's act in commuting the Sentence of Leo M. Frank, and making some pointed remarks about myself.

In that Communication, Judge Adams says: "Governor Slaton had the power and the discretion to commute the Sentence. The Constitution of the State provides (Section 6481 of the present Code) as follows: 'He (referring to the Governor) shall have power to grant Reprieves and Pardons, to commute Penalties,' etc. ... The Commutation of the Frank sentence was, therefore, strictly lawful and regular; was no more an assault, or attack, upon the Courts, or the regular and orderly Administration of law, than would be the grant of a new trial by a Judge."

Now, in answer to the above, let me say that the Constitution of Georgia also says: "The Legislative, Judicial, and Executive Powers shall forever remain separate and distinct, **and no person discharging the Duties of one shall at the same time exercise the Functions of either of the others, except as herein provided.**"

None of the Sections give the Governor the Power to Veto a Court Record. Judge Adams has been a member of the Supreme Court, and he knows that that Court holds that all parts of the Constitution should be so construed as to put no one of them in conflict with others. He knows that after the Courts have adjudicated a Criminal Case and sent a man to the Penitentiary or sentenced him to be hanged, they have no power to reconsider their action, even though newly discovered evidence proves him absolutely innocent of the Crime of which he was convicted. He knows that if a man in the Penitentiary performs a most meritorious Act, of high importance to the public weal, the Courts have no power to reward him by freeing him.

Manifestly, therefore, when the Constitution further says of the Governor: "He shall see that the laws are faithfully executed," **it did not intend that he should retry a Case on the same evidence upon which the Courts adjudicated it and reverse**

their Decision, for in so acting, he, while discharging the Duties of Governor, at the same time exercises the Functions of trial Court composed of Judge and Jury. In taking such action, he either puts himself in conflict with the very Spirit of the Constitution or he proves that the Law is really in conflict with itself. Clearly, therefore, the Governor's reasons for granting a Pardon or Commutation must be found in something else than in giving an opposite meaning to that given by the Courts to the evidence shown in the Court Record.

In my Argument before Governor Slaton, on the Frank Case, I showed that in a Case which had come before me, as Governor, I had been asked to try it on simply the Court Record and reverse the Courts, and I had declined to even hear it for the reason just above given.

Judge Adams says: "Governor Slaton was not disqualified to pass upon the Application for Clemency. . . . The laws provide for the appointment of a Judge in the place of a disqualified Judge. There is no such provision as to a Governor. . . . The Solicitor General of the Atlanta Circuit, Governor Brown and others appeared at the Hearing before Governor Slaton for the purpose of urging that no Clemency be extended to Frank. If it were thought that Governor Slaton was, **for any reason disqualified**, that was the time, in law and in good faith, to make the Objection. . . . They cannot, after the Decision make the Objection of Disqualification. They are estopped in Law and in ethics. As I read the Public Prints, and as I understand the Facts, no Objection of this kind was made or suggested. It is not right, therefore, for Governor Brown, or anyone else who appeared at the trial, to make this Objection now, or to ring the changes in the suggestion that Governor Slaton and Frank's Attorneys were partners."

Now, in reply to the above, I have shown that when the Constitution says that “no person discharging the Duties of one (Department) shall at the same time Exercise the Functions of either of the others, except as herein provided,” it certainly disqualified the Governor from handling simply the Court Record and reversing the Courts.

I distinctly **urged this Fact upon Governor Slaton.**

Again as to the disqualification of Governor Slaton by Reason of his Partnership with Frank’s Attorneys, Solicitor General Dorsey and I conferred regarding this, but as we had been advised that this point **had been already urged upon the Governor,** neither of us deemed it necessary to reiterate it at the Hearing. And, since the Hearing, Proof has been published showing that we have been correctly advised. How, therefore, were we or other Citizens of Georgia estopping from referring at any time to the Partnership in question?

Judge Adams furthermore says: “The Commutation of the Sentence to a Life Imprisonment was in no sense a setting aside of Frank’s Conviction. Imprisonment for Life is one of the two Punishments provided by Law for the Crime of murder. One is as much a Lawful Punishment as the other.”

Now, let us see about that. The Code of Georgia (Vol. II., Sec. 63) says: “The Punishment of Persons convicted of murder shall be death, but may be confinement in the Penitentiary for Life in the following Cases: If the Jury trying the Case shall so recommend, or if the Conviction is founded solely on circumstantial testimony, the presiding Judge may sentence to confinement in the Penitentiary for Life. In the former Case, it is not discretionary with the Judge; in the latter it is.”

I quoted the foregoing to Governor Slaton for the purpose of impressing upon him the fact that on the Court Record, the Constitution limits clearly the Contingencies upon which Imprisonment in the Penitentiary for Life may be made the Punishment of those convicted of murder, and argued that the Frank Case did not come under either of those Contingencies. The unmistakable inference from my Argument and from the Code of Georgia is that the Governor, of all men, should conform his acts to the Spirit as well as the letter of the Constitution.

But Judge Adams must excuse me for saying that in his Defense of Governor Slaton, he has rather overdone the thing when he goes into detail about the Governor's Law Partnership with Rosser and contends that as the Governor received none of the Partnership income from the Frank Case it is Out of Order for anyone to hold that he blended the Gubernatorial action with the partnership interest or influence.

Now, money is by no means the only persuasive power in controlling or influencing human action. **Environment** is far more frequently the controlling factor. For examples: The average man in Vermont, in 1860, sincerely believed Slavery ought to be abolished; the average man in South Carolina the same year sincerely believed the opposite. In Germany today, the average man hates England, whereas in England the average man is sincerely of the opinion that Germany is the abode of Assassins.

Hence, Governor Slaton, in a Law Partnership with Luther Rosser, naturally held a sympathy for Rosser in his Law Cases. They were Friends, with a common interest in General Legal Affairs, and by Association imbibed common Preferences and Prejudices. Another of the Partners was a Jew, and, no doubt, by Reason of that Fact, the Jews in general felt kindly to the Governor, both in Business Matters and in Politics. These

considerations were based upon human nature, hence, what was more logical than that, having entered the Partnership in question, Governor Slaton should, whether consciously or unconsciously, feel a Sympathy for the intense desires and interests of his partners?

I will not argue this point, since, with the Exception of Judge Adams, I have read after and talked with no person who defends Governor Slaton's course in entering into a Law Partnership with Rosser after the latter had been employed to defend Frank and but a few weeks before he (Slaton) was sworn in as Governor, and afterwards, as Governor, reversing all the Courts to save the Life of his Law Partner's Client.

Now, as to Judge Adams' Statement that more than ten thousand Georgians invoked Clemency for Frank, let me say that these Petitions came from men and women. But, as there are now about 400,000 white men in Georgia, and about an equal number of white women, it is manifest that only one person in eighty of Georgia's Adult White Population asked the Governor to set the Law aside in Frank's Case. No, Judge, we, the 790,000, have no desire to martyrize the 10,000, but we contest the Proposition that the 10,000 have sensed the Law better than we have.

Again, Judge Adams quotes Senator Hoke Smith as indorsing Governor Slaton's course in the Frank Case, and adds: "These are manly words, particularly as they come from a Speaker who is neither a Political nor a Personal Friend of Governor Slaton's. I notice that Governor Brown, in a Communication published in *The Macon Telegraph*, protests that he is both a Personal and Political friend. I think it clear that Governor Slaton's Opponent has been infinitely more fair and manly, than has this professed Friend."

And so it develops, that Judge Adams holds that a man's true friend is one who indorses him when he upholds the Law and also

when he nullifies the Law. I say, “nullifies the Law,” because a vast majority of the people of Georgia believe that Governor Slaton did nullify the Law; and the views of that majority assuredly are entitled to greater weight than the views of the minority. Speaking for myself, I believe my obligation to the Law which protects Society is greater than my obligation to my friend who, in my Judgment, has wounded the Law.

But let us see how “fair” Governor Slaton’s Opponent has been to him. I quote, Senator Smith’s words in *The New York Sun*: “I tell you that, if I had been in Slaton’s place, and had had a doubt of Frank’s guilt, I would have done as Slaton did if they had lynched me for it.”

Senator Smith’s words can be construed either way. “If I had a doubt of Frank’s guilt.” But does he have such a doubt? I have said unequivocally that I believed Frank should have come under the Law just as other men have done. Will Senator Smith say as much? If so, Judge Adams cannot further contend that he was “infinitely more fair and manly than I.” Let Senator Smith, who has entered the Arena, make an unambiguous declaration on the subject. We will then know his real views and the people can better size up the Case as to who has been fair to the Laws of Georgia.

In conclusion, let me say that Judge Adams refers to the “Wave of vilification that has swept over Georgia, and still survives, against Governor John M. Slaton,” and adds that “every man who has taken the Position that Frank’s Sentence ought to be commuted will have his motives impugned.” Exactly the contrary has been the Case. The “wave of vilification” was upheaved in other States against the Courts and fair fame of Georgia, and the Press and public men of Georgia almost without Exception sat mute and allowed it to dash against the very

arcanum of Justice and construed Law. The few who dared to stand openly for the Courts, and the Process of Law have been caustically criticized and have seen their motives impugned. I was one of the few—and that few can be counted on the fingers of one hand. I have indulged, in no vilification, and have been open and above board in every word I have spoken or written in Defense of the Courts and Laws of Georgia. Whatever may be, the Penalty, I have nothing to retract. My allegiance is to Georgia.

JOSEPH M. BROWN.

Marietta, Ga., Sept. 21, 1915.
